The lower courts decision violates prior Precedent of this circuit (fifth) and the U.S. Supreme Court, Article 6 Section 2 of the U.S. Constitution.

Reasons For Granting The Writ

I. The Court's below applied the "Pre Text-Plus" standard and not the Established by Frederick Hart & Co., Inc. V. recordgraph Corp 169 F 2d 580 (3d Cir 1948); United States ex Rel Kolton v Halpern 260 F 2d 590 (3d Cir 1958) United States ex Rel Nobles v Ivey Bros Constru Co; Inc., 191 F. Supp. 383 (D. Del 1961); Jamison v Pennsylvania Salt Mfg. Co ZZ F.R.d 238 (W.D. Pa 1958); bunny Bear, Inc v Dennis Mitchell Industries 139 F. Supp 542 (E.D PA. 1956) Levy v Equitable Life Assur. Society, 18 F. Rd. 164 (E.D. Pa 1955) and St. mary's v Hicks, 1993 Wl 220265 (June 25 1993).

Gilder documentary evidence of Aetna's Procedural Checklist for Performance Appendix for writ certiorari A-20 Aetna response to plaintiff petitioner Gilder request for production of document. Appendix for writ A-31.

Aetna progressive discipline checklist. Appendix for writ A-21, Aetna-written warning address to Debra A. Gilder Petitioner appendix for writ of certiorari A-22, Aetna- Probation warning address to Debra A. Gilder, Appendix for writ of certioriar A-23, Aetna - Disciplinary Process of appellant Gilder Job requirement, Appendix of writ of certiorari A-24, Aetna Termination letter address to Debra A. Gilder, Appendix of writ of certiorari A-25 make clear that in fact Aetna Life Insurance Terminated Debra A. Gilder on May 20, 1987 and did not simply demote her. A trial court could acknowledged that an Issue of fact was created as to how Gilder was terminated. The trial Court never outlined in Gilder ever established a Prima Facie case. If the Fifth Circuit had outlined a new pretext burden beyond that required by Burdine by the Decisions in Hanchey v Energas Co., 925 F. 2d 96 (5 CA 1990) and Bienkowski v American Airlines, Inc 351 F. 2d 1503 (5th Cir 1988) Utilizing this standard and the 1963 Amendment of F.R.A.P, the lower courts found that Gilder evidence of Pre text fell short because the lower court state there is no admissible evidence submitted by

the Petitioner Gilder to show Pre-textual of discriminatory reason or a motivated by the employer Aetna. It is clear that the trial court and the court of appeals measured Gilders evidence of Pretext under the pretest plus standard-meaning that proving Aetna Life Insurance reason legitimate, non-discriminatory reason to be false is not sufficient in spite of Gilder's Prima Facie case. The fifth Circuit's opinion did not acknowledge that it had established a "New Pretext Burden" in hanchey and Bienkowski.

The fifth Circuit and trial court evidence total confusion about (1) The important of a Prima Facie Case and (2) what is required to show Pre Text. This is well demonstrated by the fact that it cited, with approval, the reasoning of the Eight Circuit in St Mary to the effect that establishing the employer's reason to be unworthy of credence" automatically entitled the petitioner claimant Gilder to Judgment. Yet, it ignored the fact Gilder had established a Prima Facie Case and that Gilder evidence Raised Fact Issues about Aetna's Story Being "unworthy of credence". It said that proving unworthy of credence was not enough to show "Pretext" and that the

Pretext evidence must itself evidence of race and sex discriminatory to be a legitimate discriminatory reason. A comment by the court in Hanchey offered a preview of what would later happen to Gilder. The court there attempted to explain using "Burdine.

Such Pretext can be proved either by showing that a discriminatory reason motivated the defendant or by showing that the preferred reason is unworthy of credence. The latter method, however, must extend beyond casting doubt on the reasonableness of the employer's action; otherwise the law would be converted to a "Just Cause" provision for the Gilder evidence. Burdine, and not St. mary's say that after presenting a Prima Facie case, the plaintiff can prevail by showing that Defendant's reasons are unworthy or credence. This was precisely the reason Gilder offered this evidence. The proof of race and sex, fraud as the motive came from the inference created by the Prima Facie case and Gilder other evidence, not from the Pretext evidence itself.

III. The Lower Courts Improperly Drew Inferences In favor of The Motion For Summary Judgment

By presuming that intent motive of Aetna Life Insurance to crate a file on the Petitioner Gilder for a legitimate non discriminatory reason for the petitioner Gilder termination by entering fraudualry documents into petitioner personal file had only unlawful purposes and the lower courts did not follow the clear standard required by this court for evaluating such evidence in connection with a motion for summary judgment as set forth in Frederick Hart & Co., Inc v recordgraph Corp, 169 F 2d 580 (3 d cir, 1948) United States ex rel Kolton v Halperin, 260 F 2d 590 (3d Cir 1958);; United States ex Rel Nobles v Ivey Brosl Constru Co. Inc., 191 F. Supp 383 (D Del 1961) Jamision v Pennsylvania Salt Mfg Co. ZZ F.R. D 238 (W.D. Pa 1958) Bunny Bear Inc. v Dennis Mitchell Industries 139 F. Supp 542 [E.D. PA. 1956] Levy v Equitable Life Assur Society 18 F. Rd. 164 [E.D. PA 1955]. U.S. v Diebold Inc., 369 U.S. 654 82 Sc 993 (1962); Adickes v. S.H. Kress & Co. 398 U.S. 144, 90 S CT 1598 (1970); and Anderson v Liberty Lobby Inc 477 U.S. 242, 106 S. CT 2505 (1986). PG 34

Conclusion

Gilder did show the lower courts admissible evidence which proved legal discrimination, illegal termination which was unlawful under executive order 11246 and 1964 Civil Right Act and 1991 Amended Civil Right Act by the respondent Aetna Life Insurance and Aetna unlawful motives. Gilders attempt to establish pretext by showing that Aetna version was "unworthy of credence" was met with the Pre Text- plus" requirement and "well pleaded" requirement that such evidence is insufficient unless evidence of race, sex discrimination is self contained there in Gilder Prima Facie case evidence created no inference what so ever of discrimination.

The confusion in the lower courts concerning proof of Pre text by a showing that employer's reason is unworthy of credence cause of this court to take jurisdiction in the St mary case, Frederick Hart & Co, Inc v Recordgraph Corp 169 F 2d 580 (3d Cir 1948).

United States ex rel Kolton v Halpern 260 F 2d 590 3d Cir 1958 United States ex Rel nobles v Ivey Bros Const. Co. Inc 191 F. Supp 383 (D Del 1961) Jamison v Pennsylvania Salt Mfg. to attempt to clarify that confusion. Doubt, however, still prevails with regard to the same issue at the summary judgment stage of a discrimination case.

Relying on the statement in Burdine Gilder attempted to prove that Aetna reasons advanced in its motion for summary judgment were "unworthy of credence' but this was held to be insufficient and the standard used was whether or not Gilder's Pretext evidence itself showed "Aetna" discriminatory Intent. Both opinions in St. Mary' acknowledge that the "unworthy of credence test is alive and well at the time of trial if a prima facie case also exists. Logically this test must likewise be applicable at the summary Judgment Stage, or the Trial stage will seldom be reached - as noted by the dissent in St. Mary's.

The instant case affords the court a prompt opportunity to put to rest any doubt by granting this petition or alternatively, by remanding this case to the trial court with instructions that Gilder's Pre text evidence/well pleaded evidence be revaluated under the "Unworthy of credence" Standard, and that on a motion for summary Judgment inference ces drawn from the evidence are to be adverse to the moving party.

Respectfully Submitted;

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Debra A. Gilder

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Petitioner is a Pro-Se\ No Attorney\ No License to Bar

Sworn to and Subscribed before me on this 29th Day of January 1994.

George E. Howard

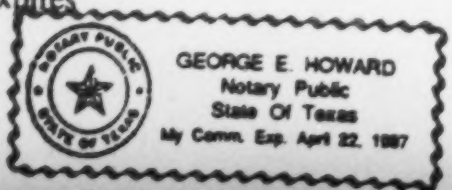
Notary Public In and For the State of Texas

GEORGE E. HOWARD

Printed Name of Notary

April 22, 1997

My Commission Expires



APPENDIX A

FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

THE UNITED STATES COURT OF APPEAL

FOR THE FIFTH CIRCUIT

NO.93-8397

SUMMARY CALENDAR

DEBRA A GILDER,

PLAINTIFF-APPELLANT

V

AETNA LIFE AND CASUALTY

DEFENDANT-APPELLEE.

Appeal from the United States District Court for the Western District of Texas

SA-93-CA-394

Before DAVIS,JONES,and DUHE,Circuit Judges.

PER CURIAM:

After carefully reviewing the parties'briefs on appeal in light of the proceeding in the district court, we are not, persuaded that GILDER presented admissible

evidence--beyond her mere speculation--that AETNA'S legitimate, non-discriminatory reasons for firing her were pretext for illegal discrimination.

As the district court held ,there is no genuine issue of material fact, and summary judgement was correctly granted for AETNA. Further,we see no reversible error in the district court's orders of which appellant complains or otherwise. The charges of fraud make no sense. AFFIRMED.

United States Court Of Appeals Filed Date Nov.17,1993

** Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled princples of law imposes needless expense on the public and burdens on the legal profession."Pursuant to that Rule, the Court has determined that this opinion should not be published.*

THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

NO. SA-92-CA-394

DEBRA A GILDER,

PLAINTIFF,

VS

AETNA LIFE & CASUALTY

DEFENDANT.

ORDER

On this date came on for consideration by the court defendant Aetna Life & Casualty's first and second post-discovery motions for summary judgment,plaintiff's responses thereto ,as well as the entire record. Plaintiff Gilder's Title VII complainst alleges that defendant discriminated against her because of her race and sex when defendant terminated her employment on May 20, 1987.

Plaintiff's complaint also alleges that defendant violated Executive Order 11246. Plaintiff seeks back pay, insurance and retirement benefits, and ten million dollars for extreme mental anguish.

Defendant moves to dismiss plaintiff's claims of race and sex discrimination as barred by limitations. Defendant also asserts that plaintiff's " Executive Order No 11246" allegation should be dismissed because it affords no private right of action for individual plaintiffs. Defendant alternatively argues that it is entitled to summary judgment on the merits of plaintiff's TITLE VII cause of action

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The Court hereby GRANTS plaintiff's motion for leave to file briefs in excess of twenty pages (docket no 129) .

Executive Order 11246 affords no private right of action for individual plaintiff. Utley v. Varian Associates,Inc.,811 F .2d 1279,1285 and n. 4 (9th cir.) cert. denied 484 U.S. 824,108 S.CT 89,98 L.ED.2d 50 (1987) The Fifth Circuit has found no private cause of action under the predecessor order to Executive Order No. 11246. Farkas v. Texas Instruments,Inc., 375 F .2d 629,632-3 (5th cir.) cert. denied 389 U.S. 977,88 S CT. 480,19 L. Ed.2d 471 (1967). Accordingly, the plaintiff's claim that defendant Aetna violated the Executive Order is hereby DISMISSED. See Robinson v. Jacksonville Shipyards, Inc., 760 F.Supp. 1486, 1532 (M.D. Fla. 1991). The Court will now focus on plaintiff's remaining race and sex discrimination claims.

SUMMARY JUDGMENT STANDARDS

Rule 56(b), Fed.R.Civ.P., provides that a defending party may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor. Summary judgment

shall be rendered if the pleadings, depositions, andwers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), Fed.R.Civ.P. When a motion for summary judgment is made and supported, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue for trial; if he does not so respond, summary judgment, if appropriate, shall be entered against him. Rule 56(e), Fed.R.Civ.P.A party seeking summary judgment bears the initial burden of informing the Court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v Catrett, 477 U.S. 371, 323, 106, S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

However, there is no requirement that the moving party support its motion with evidentiary materials negating the opponent's claim. Id. Regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the Court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied. Id.,at322-323, 106 S.Ct. at 2552-53. The party opposing a motion must present affirmative evidence in order to defeat a properly supported motion for summary judgment. Anderson v Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct.2505, 2514, 91 L.Ed.2d 202 (1986). Summary judgment may be appropriate even if there is some metaphysical doubt as to the material facts. Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1355-56, 89 L.Ed.2d 538 (1986); See Spiller v. Ella Smithers Geriatric Center, 919 F.2d 339, (5th Cir. 1990).

The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. Anderson, 477 U.S. at 247-248, 106 S.Ct. at 2510. The dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving pary. Id.

Summary judgment is proper if, under the governing law including consideration of the substantive evidentiary standards, there is only one reasonable conclusion as to the verdict, but not if reasonable minds could differ as to the import of the evidence. Id., at 250-251, 255, 106 S.Ct. at 2511, 2514. Summary judgment, although a useful device, must be employed cautiously because it is a final adjudication on the merits. The Court must, therefore, draw all reasonable inferences most favorable to the party opposing the motion. Id.

LIMITATIONS

Defendant contends that after plaintiff's May 20, 1987 termination, she filed a timely charge of race discrimination which was duly investigated. Defendant asserts that plaintiff's subsequent sex discrimination allegation was imcluded in the determination. Defendant argues that plaintiff did not timely bring the instant lawsuit until over three years after the November 16, 1988, right to sue letter encompassing both the sex and race claims was issued. Plaintiff asserts that she did not receive the November, 1988 right to sue letter; that she had no control over the government agencies processing her claims; and that she actually received a right to sue letter issued March 19, 1992.

After reviewing the summary judgment evidence, the Court finds that plaintiff Gilder was terminated from her employment as a Field Claim Examiner with Aetna on May 20, 1987, she filed

a charge of race discrimination which was assigned No.360-87-0914. See Def. First S/J, Exh. A While plaintiff's EEOC race discrimination charge was pending, plaintiff wrote a October 7, 1987 letter to Alonzo Meggett of the United States Department of Labor complaining that she had been terminated due to her race and sex. The letter was received by the Department of Labor on November 13, 1987 See Def. First S/J, Exhs. D and E. Though the letter mentions sex discrimination, plaintiff primarily complains of disparate treatment due to race. Id.

The Department of Labor's investigation based on plaintiff's complaint resulted in a finding of insufficient evidence to conclude that defendanthad violated Executive Order 11246. See Def. First S/J, Exh. F*. plaintiff's subsequent appeal resulted in a finding that defendant did not violate its nondiscrimination and affirmative action obligations under Executive Order 11246.See Def. First S/J, Exh.G.

** Plaintiff Gilder claims that Exhibit F is a fraud copy of the investigation results.*

On February 19, 1988, the EEOC sent a notice to defendant Aetna that plaintiff Gilder had filed a charge based on race and sex that has been initially processed by the Department of Labor. See Def. First S/J, Exh. H. The notice indicated that No. 360 88 0628 was assigned to the charge and that defendant need do nothing in response to the charge. Id.

On June 7, 1988, the EEOC decided that the investigation did not disclose any evidence that plaintiff's race was a factor in her discharge. See Def. First S/J, Exh. B. Following plaintiff's appeal, the EEOC reviewed the investigation of the charge and all supplemental information furnished. See Def. First S/J, Exh. C. On November 16, 1988, the final determination and notice of right to sue was issued referencing Charge No. 360 87 0914. Id.

The EEOC issued another Notice of Right to Sue Letter on March 18, 1992, referencing Charge No. 360 88 0628. See Complaint (docket no. 1), first attachment. This lawsuit was filed on April 13, 1992.

A civil action must be brought within ninety days of receipt of a right to sue letter from the EEOC. See Title 42 U.S.C. s 2000e-5(f); Berry v. Cigna/RSI-Cigna, 975 F.2d 1188, 1191 (5th Cir. 1992). In this case, the EEOC issued Notices of Right to Sue on November 16, 1988 and March 18,1992.

Plaintiff argues that she never received the earlier November 16, 1988 right to sue letter because it was not addressed to her and was not sent certified mail. At her deposition, she could not recall whether she had seen it. See Def. First S/J, Exh. I, pg. 166.

Whether plaintiff received the November, 1988 right to sue letter and why the EEOC issued the March 18,1992 right to sue letter constitute genuine issues of material fact.

Drawing all inferences in favor of plaintiff Gilder, this Court cannot comfortably conclude that plaintiff's complaint is time-barred. The Court will therefore assume that the complaint is timely filed.

TITLE VII ALLEGATIONS

Defendant further argues that summary judgment is appropriate because plaintiff's race and sex allegations are not supported by the record. Defendant contends that plaintiff does not meet her prima facie burden of establishing that she is qualified for her position or that she was replaced by a minority. Defendant asserts that legitimate, nondiscriminatory reasons existed for plaintiff's discharge. Plaintiff complains about the standards that were set for employees and the progressive discipline that she received. She also asserts that she eas not discharged for legitimate business reasons.

In passing Title VII, Congress announced that "sex, race, religion, and national origin are not relevant to the selection, evaluation, or compensation of employees."
Price Waterhouse v. Hopkins, 490 U.S. 288, 109 S.Ct. 1775, 1784, 104 L.Ed.2d 268 (1989). In a typical disparate treatment discharge case, the plaintiff must prove a prima facie case of discrimination by showing that (1) plaintiff is a member of a protected group; (2) plaintiff was qualified for the job that was held; (3) plaintiff was discharged; and (4) after plaintiff's discharge, the employee filled the position with a person who is not a member of a protected group.

Vaughn v. Edel, 918 F.2d 517, 521 (5th Cir. 1990). Of course, the specification of the prima facie proof required may differ according to the fact situation. Id. at 521, n.4; See also Frazier v. Garrison I.S.D., 980 F.2d 1514, 1526 (5th Cir. 1993).

Once a prima facie case is established, the defendant must articulate a legitimate, nondiscriminatory reason for the termination. If the defendant articulates such a reason, the plaintiff must then show by a preponderance of the evidence that the reasons for termination are pretextual. Vaughn, 918 F.2d at 521. Plaintiff may show pretext by persuading the Court that a discriminatory reason more likely motivated the employer or by showing that the employer's proffered explanation is unworthy of credence. Little v. Republic Refining Co., Ltd., 924 F.2d 93, 96 (5th Cir. 1991) citing Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248,256, 101 S.Ct. 1089, 1095, 67 L.Ed. 2d 207(1981)

Ultimately, the plaintiff must prove that she was discriminated against because of her race or sex. See Valdez v. San Antonio Chamber of Commerce, 974 F.2d 592, 596 (5th Cir. 1992).

After reviewing the summary judgment evidence, the Court finds that black female Debra Gilder was initially hired by defendant Aetna in September, 1981. By June 1985, plaintiff had been promoted to Field Claim Examiner, Class 24. Her elevation to Field Claim Examiner was her fifth promotion in five years with the company, and indicates that she was minimally qualified for her position. See Def. Second S/J, pg.2.

A Field Claim Examiner paid claims under Aetna's various benefit plans. The position description lists the job's two objective measures of performance as quality and average daily production. See Def. Second S/J., Exh. D. Defendant's home office set forth certain minimum standards of performance (MSP). See Def. Second S/J, Exhs. E and F. Employees were rated according to the standards set by the MSP.

The summary judgment evidence indicates that plaintiff was formally disciplined for poor quality in late 1985 and late 1986.

The verbal warning was extended on November 12, 1985 and plaintiff was placed on written warning on January 10, 1986. After she showed improvement, plaintiff was removed from written warning on February 10, 1986. See Def. Second S/J, Exh. G.

Satisfactory performance continued until plaintiff's quality results failed to meet requirements in September and November, 1986. Plaintiff was again placed on verbal warning on November 11, 1986. See Def. Second S/J, Exh. H.

Plaintiff's three month average of weighted claims per day for December, 1986 through February 1987 did not meet standards and resulted in a Written Warning on March 13, 1987. See Def. Second S/J Exh. K. Plaintiff's difficulties continued. In April 1987 defendant lowered plaintiff's production goals; placed her on probation; and explicitly warned her that failure to meet probation terms may result in termination. See Def. Second S/J, Exhs. L and M.

On May 20, 1987, after plaintiff had failed to meet the reduced production goals mandater by her probation, defendant Aetna terminated plaintiff's employment. See Def. Second S/J, Exh. N. Defendant also notes that similarly situated nonblack and male employees have been disciplined and discharged less serious performance deficiencies. See Def. Second S/J, Exh. O. The Department of Labor analysis, affidavits from supervisors, and statistical breakdown of hirings and terminations indicate that defendant did not engage in discriminatory conduct. See Def. Second S/J, Exh. C; Exh. P; Exh. Q.

After reviewing the summary judgment evidence, the Court finds that while plaintiff subjectively believes that she has been discriminated against*, the record indicates otherwise. Defendant has articulated legitimate, non-discriminatory reasons for terminating plaintiff Gilder in May, 1987. The Court finds

no genuine issues of material fact which preclude the granting of summary judgment in this matter.

Accordingly, the Court hereby DENIES defendant's first postdiscovery motion for summary judgment. The Court hereby GRANTS defendant's second post-discovery motion for summary judgment and hereby DENIES plaintiff's Title VII race and sex discrimination claims. Plaintiff's claim that defendant Aetna violated Executive Order 11246 is hereby DISMISSED.

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*The isolated conflict with manager John Ruff in the record does not appear sufficiently connected to the decision to terminate plaintiff. See Def. Second S/J, Exh. R, pg. 77-78.

Cost of court are hereby assessed against plaintiff. In view of the circumstances, the Court in its discretion declines to award attorneys' fees to defendant. The district clerk shall immediately issue the final judgment in this matter. This order was dated the 6th day May, 1993,and was signed by **H.F.GARCIA**.

IN THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

IN RE

NO. 93-8397

DEBRA A. GILDER,

PLAINTIFF-APPELLANT,

VS

AETNA LIFE AND CASUALTY,

DEFENDANT-APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO D.C. NO. SA-92-CV-394

APPELLANT'S GILDER PETITION FOR SUGGESTION OF REHEARING EN BANC

DEBRA A. GILDER

Pro-Se/Plaintiff/Appellant

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IN THE UNITED STATES COURT OF APPEALS

IN RE

NO. 93-8397

DEBRA A. GILDER,

PLAINTIFF-APPELLANT,

VS.

AETNA LIFE AND CASUALTY,

DEFENDANT-APPELLEE

Certificate of Interested Persons

The Undersigned Counsel of record certifies that the following listed persons have interest in the out come of this CASE, whether represented by counsel or not as defined in the Local Rule F.R.A.P. 28.2, 1

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Counsel for the United States Labor Department

Statement of Counsel/Pro-Se Gilder

I express a belief, based on a reasoned and studied professional Judgment, that the panel decision is contrary to the following decision(s) of the United States court of appeals for the Fifth Circuit [or the supreme of the United States and, Third Circuit].court

1. Frederick Hart & Co., Inc v record graph Corp., 169 F 2d 580 (3rd Cir: 1943;

2. United States Ex Rel. Kolton v Halpern, 260 F. 2d 590 (3d Cir; 1958);

I express a belief, based on the reasoned and studied professional judgment that this appeal involves one or more questions of exceptional importance:

1. Whether the court erred in not applying the correct procedural under rule 56 and the amendment of 1963 for summary judgment, on order dated 11-17-93 [Exhibit A] appendix filed with Enbanc.

2. Where the court of appeal erred in not applying rule 60(b) of the Fed R. Civ P. in the appellant Gilder appeal and all of the orders in the appellant Gilder record excerpts presented to the court of appeal.

3. Whether the court of appeal erred in not applying Rule 28 1292(b) U.S.C.A. in Appellant Gilder appeal and all of the orders in the Gilder record excerpts.

4. Whether the court of appeal erred in not applying Rule 52b U.S. C.A. on all the orders presented by the appellant Gilder in her record excepts filed into the United State court of appeal of Fifth Circuit.

5. Whether the court of appeal erred in nor sending the appellant Gilder appeal thru to the staff attorney office for review, preparation of memorandum of merits of the case on all motions. Exhibit I appendix file enbanc.

6. Whether the court of appeal erred in not reviewing the appellant Gilder appeal under legal conclusion on a De novo Basis Appellant Gilder excepts briefs and record filed in court of appeal.

7. Whether the court of appeal erred in not addressing the appellant Gilder Briefs and record excerpts on mix questions of Law and fact finding in part that are clearly erroneous and application of wrong legal standards briefs and record excepts filed in court of appeal of appellant Gilder.

8. Whether the court of appeal erred in reviewing the defendants appellee briefs when their attorney Cyndi Benedict did not file a appearance in to the court of appeal. [court of appeal docket sheet exhibit E].

9. Whether the court of appeal erred in extending the defendants appellee Aetna time for filing their briefs when their attorney Cyndi Benedict did not file a appearance and did not file a motion into the court under F.R.A.P 27.4 [court of appeal docket sheet exhibit E, D].

10. Whether the court erred in allowing the defendant appellee Aetna attorney to file a late appearance filed 9-16-93 when the appellant Gilder appeal were filed June 18, 1993 [court of appeal docket sheet exhibit E] page 2.

11. Whether the court of appeal erred in allowing the defendant Aetna Life insurance appellee to file their briefs late (appellee briefs filed 9-23-93) and their extension were to 9-22- 93 [court of appeal docket sheet exhibit E] page 2.

12. Whether the court of appeal erred in not addressing the issue whether the appellant Gilder proved a prima face case in the United State District Court under case No D.C. SA-92-CV- 0394. [Page 5 of the appellant Gilder briefs filed in to the court of appeal Aug 2, 1993 see docket exhibit].

13. Whether the court of appeal erred in not stating the finding of facts and conclusion of law on orders issued 11-17-93 [Exhibits A, F appendix filed with En Banc rehearing].

14. Whether the court of appeal erred in not setting forth separate documents when the judgment were enter in appellant Gilder appeal on order 11-17-93 [Exhibit A, F appendix file with Enbanc rehearing].

15. Whether the court of appeal erred in not issuing a order stating that appellant Gilder pay the defendant appellee. Aetna the cost on appeal. [Exhibits C appendix file with Enbanc].

16. Whether the court of appeal erred on order dated 11-17- 93 denying no reversal of the district court ruling of summary judgment stating the appellant Gilder submitted no admissible evidence when clerks office stated no appendix were necessary when filing the appellant briefs and record excerpt. [Exhibit A appendix file with the Enbanc rehearing.

17. Whether the court of appeal erred in using the wrong opinion in its judgment on order issue 11-17-93 instead of following U.S.C.A. 47.6 and U.S.C.A. 47.5.3 exhibit A appendix file with Enbanc rehearing.

18. Whether the court erred in not considering that the appellee Aetna attorneys fail to follow the laws or make some misrepresentation of the facts that their attorneys are following the Law then it becomes fraudently [District Court Docket Sheet 64, 60, 67].

19. Whether the court of appeal erred on order date 11-17- 93 when judgment were entered that whether the appellee Aetna's attorneys cohort or whether Aetna attorney misrepresentation of the material facts during pre trial matters and discovery by the following stating that she and her friend were going to fix this lawsuit. Docket court docket sheet 64, 60, 67 and appellant briefs page 2, 3.

20. Whether the court erred in allowing Aetna appellee to created the attach file in order to support their non- discriminatory reason against the appellant Gilder.

21. Whether the court erred in not questioning the authentication of the appellee Aetna Document to be valid on invalid.

22. Whether the court of appeal erred in not reviewing the document issued by Aetna appellee setting the appellant Gilder were put on warning 4-20-87 on whether Aetna created this document in order to get out of their non-discriminatory reason and illegal discrimination. Which would make Aetna moody for illegal discrimination invalid Exhibit 4 file in D.C. under Docket Sheet 131.

23. Whether the court of appeal clerk office erred in handing the appellant Gilder appeal when under Rule 27 the staff attorney office were to handle Pro Se motions, probable cause, motion for appointment of counsel, etc memorandum on the merits of the case when all briefs are filed appendix I file with En Banc rehearing.

24. Whether the court of appeal erred in it conclusion on not revising the district court decision of summary judgment is clearly erroneous for realizing on a fraudenty document, exhibit Y of summary judgment response of appellant Gilder Number 131. D.C. Docket Sheet

25. Whether the court of appeal erred in not reviewing the appellant Gilder response to part one and part two to the defendants appellee Aetna Briefs in support of summary judgment under the district court transcripts docket sheet 125, 130, 131.

26. Whether the court erred in not reviewing document exhibit U which has Brenda Riffle a employee of Aetna performance appraisal and exhibit z of the appellant Gilder response to part two of the defendant appellant brief in support of summary judgement, which has Debra Brehm performance appraisal as evidence that

Aetna didn't put these white employee on any discipline action for failing to meet either production or poor performance. Aetna did not terminate these whit employee like they did the appellant Gilder. [Filed in the District court Docket Sheet 131].

27. Whether the court erred in not reviewing the appellant Gilder appeal and orders which there is substantial ground for difference of opinion and such order involves controlling question of Law when District Court denied the appellant Gilder of a Interlocutory Appeal or order file by D.C. Docket sheet 102.

28. Whether the court erred in not reviewing the appellant Gilder appeal and orders D..C. Docket sheet 2, 49, 70, 113, 61 for a court appointed counsel, which there is substantial ground for difference of opinion and such orders involves controlling questions of law.

29. Whether the court erred in not reviewing the appellant Gilder appeal and orders from district court docket sheet # 8, 11, 87,99, 103 and 122 which there is substantial grounds for difference of opinion and such orders involves controlling question of law.

30. Whether the court erred in not reviewing the appellant Gilder appeal and orders in the record excerpt of appellant Gilder on the District court Affirming Orders of Magistrate appeal (Docket sheet 65, 67, 68, 70, 71 appellant Gilder responses to order 64, 66, 67) which there is substantial grounds for difference of opinion and such orders involves controlling questions of law.

31. Whether the court of appeal erred in not reviewing order file with district court docket sheet 125 allowing the appellee Aetna attorneys to Barger the appellant Gilder witness before trial when Aetna did not submit a witness list into the district court and discovery had expired.

32. Whether the court deprived the Plaintiff-Appellant's Gilder of due processing in the appellant Gilder appeal.

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I. The panel erred in allowing the Defendant Appellee Aetna Attorney to file without a appearance, which substantial Impaired the Appellants Right and materially effected the out come of the case and appellant and appeal.

II. The panel erred in allowing the Appellee Aetna attorney a extension of time by telephone and not comply to U.S.C.A Rule 27.4 which substantially Impaired the appellant Gilder Rights and materially effected the outcome of the case and appellant appeal.

III. The panel erred in reviewing the appellee Aetna...Briefs when they were filed untimely even after the court granted the appellee Aetna extension of filing their, which substantially impaired the appellant Gilder rights and materially effected the out come of the case appeal.

IV. The Panel erred in allowing the appellee Aetna attorney to file a late attorney appearance which substantially impaired the appellant Gilder rights and materially effected the outcome of the case and appeal.

V. The panel erred in not addressing all issues put before the court in the appellant Gilder appeal which substantially impaired the appellant Gilder rights and materially effected the out come of the case and appellant appeal.

VI. The panel erred in applying the procedural under rule 56 and the amendment of 1963 for summary judgment which substantially impaired the appellant Gilder rights and materially effected the out come of the case and appeal.

VII. Whether the court erred in not sending the appellant Gilder motions, pleads, briefs through to the office of staff attorney since appellant is a Pro-Se which substantially impaired the appellant Gilder rights and materially effected the out come of the case and appeal Exhibit I Appendix

Table of Citations

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